



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

WR-63,590-03

EX PARTE ROBERT GENE WILL II

**ON APPLICATION FOR WRIT OF HABEAS CORPUS
CAUSE NO. 862715-C IN THE 185TH DISTRICT COURT
HARRIS COUNTY**

Per curiam.

ORDER

This is a subsequent application for writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071, Section 5.

On January 23, 2002, Applicant was convicted of the offense of capital murder. The jury answered the special issues submitted under Article 37.071 of the Texas Code of Criminal Procedure, and the trial court, accordingly, set punishment at death. This Court affirmed Applicant's conviction and sentence on direct appeal. *Will v. State*, No. AP-74,306

(Tex. Crim. App. Apr. 21, 2004)(not designated for publication). We denied relief on Applicant's initial post-conviction application for writ of habeas corpus, *Ex parte Will*, No. WR-63,590-01 (Tex. Crim. App. Mar. 29, 2006)(not designated for publication), and dismissed his second such application, *Ex parte Will*, No. WR-63,590-02 (Tex. Crim. App. Sept. 12, 2007)(not designated for publication). We received Applicant's instant post-conviction application for writ of habeas corpus on September 23, 2013.

The record reflects that Applicant is currently challenging his conviction in Cause No. H-07-CV-1000, styled *Robert Gene Will II v. William Stephens*, in the United States District Court for the Southern District of Texas, Houston Division. The record also reflects that the federal district court has entered an order staying its proceedings for Applicant to return to state court to consider his current unexhausted claims. Therefore, this Court may consider this subsequent state application. *See Ex parte Soffar*, 143 S.W.3d 804 (Tex. Crim. App. 2004).

Applicant presents three allegations in the instant application. We have reviewed the application and find that the first and second allegations may satisfy the requirements of Texas Code of Criminal Procedure Article 11.071, Section 5(a). Accordingly, we remand this cause to the trial court for consideration of Applicant's first and second allegations.

IT IS SO ORDERED THIS THE 5TH DAY OF FEBRUARY, 2014.

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